

ORDINANCE NO. 2003-016

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE 4, SECTION 4.11 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO THE ENVIRONMENTAL ORDINANCE APPEALS BOARD; AMENDING ARTICLE 4, SECTION 4.15 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO THE CREATION AND APPOINTMENT OF HEARING OFFICERS; AMENDING ARTICLE 7, SECTION 7.6 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO THE ADMINISTRATION OF EXCAVATION PERMITS; AMENDING ARTICLE 9, SECTION 9.1 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO APPEALS OF LIGHTING PLANS; AMENDING ARTICLE 9, SECTION 9.3 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO APPEALS OF WELLFIELD PERMITS; AMENDING ARTICLE 9, SECTION 9.4 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO APPEALS OF WETLANDS PERMITS; AMENDING ARTICLE 9, SECTION 9.5 OF THE PALM BEACH COUNTY UNIFIED LAND DEVELOPMENT CODE, PERTAINING TO ADMINISTRATION OF VEGETATION PERMITS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has determined that the Environmental Ordinance Appeals Board is no longer necessary as it is almost entirely unused; and

WHEREAS, an adequate opportunity for appeal of administrative action taken by the Department of Environmental Resources Management (ERM) is provided by appeal to a hearing officer and petitioning for writ of certiorari to the Circuit Court;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

PART I.

Article 4, Section 4.11 of the Palm Beach County Unified Land Development Code is hereby deleted in its entirety.

PART II.

Article 4, Section 4.15 of the Palm Beach County Unified Land Development Code is hereby amended as follows:

SEC. 4.15 HEARING OFFICER.

A. Creation and appointment. The County Administrator may, from a

1 pool selected by the Board of County Commissioners, appoint one
2 (1) or more hearing officers to hear and consider such matters as
3 may be required under any provision of this Code or as may be
4 determined to be appropriate by the Board of County Commissioners
5 from time to time. Such hearing officers shall serve at the
6 pleasure of the Board of County Commissioners for such period as
7 is determined by the Board. Code Enforcement Special Masters, as
8 established and appointed pursuant to Section 4.14 of this Code,
9 may serve ex officio as Hearing Officers as set forth in this
10 section. Whoever shall accept an appointment as a hearing
11 officer shall, for a period of one (1) year from the date of
12 termination as holder of such office, not act as agent or
13 attorney in any proceeding, application or other matter before
14 any decision-making body of Palm Beach County in any matter
15 involving land that was the subject of a proceeding which was
16 considered.

17
18 **PART III.**

19 Article 7, Section 7.6 of the Palm Beach County Unified Land
20 Development Code is hereby amended as follows:

21 **7. Appeals.** An applicant may appeal a final determination
22 made by:

23 **a. Director of ERM.** Appeals shall be filed with the Director of
24 ERM pursuant to this Section. The applicant shall comply with
25 the following appeal procedures.

26 **(1) Submittal.** An appeal must be made within twenty (20) days of
27 the applicant's receipt of the final action. The appeal must
28 state with specificity the reasons for the appeal and shall
29 contain such data and documentation upon which the applicant
30 seeks to rely.

31 **(2) Hearing.** Each hearing shall be held before a Hearing Officer

1 as provided for in section 4.15 of this Code within sixty (60)
2 working days after the appeal was filed. The applicant will
3 receive notice of the hearing no less than fifteen (15) working
4 days in advance of the hearing. At the hearing, the Hearing
5 Officer shall provide the applicant and the Director of ERM, or
6 their respective legal representatives, an opportunity to present
7 testimony and evidence, provided such information was part of the
8 review before the Director of ERM. All testimony shall be under
9 oath and shall be recorded. The formal rules of evidence shall
10 not apply but fundamental due process shall be observed and shall
11 govern the proceedings. The Hearing Officer in his or her
12 discretion, may exclude irrelevant, immaterial or unduly
13 repetitious evidence, but all other evidence of a type commonly
14 relied upon by reasonably prudent persons in the conduct of their
15 affairs shall be admissible, whether or not such evidence would
16 be admissible in a trial in the courts of Florida. Any part of
17 the evidence may be received in written form. The Hearing
18 Officer shall reverse the decision of the Director of ERM only if
19 there is substantial competent evidence in the record that the
20 Director of ERM erred in applying the standards of this section.
21 At the conclusion of the hearing, the Hearing Officer shall
22 render its decision (order), based on the evidence entered into
23 record. The decision shall be stated in a written order and
24 mailed to the applicant not later than ten (10) days after the
25 hearing. Written order of the Hearing Officer shall be final.

26 **b. Director of Zoning or Director of Land Development.** Appeal
27 shall be made to the appropriate appeals board as provided in
28 Sec. 5.6 (Development Review Appeals Board) or Sec. 5.7 (Board of
29 Adjustment), as applicable.

30 **c. Judicial Relief.** An applicant or ERM may appeal a final
31 written order of the Hearing Officer within thirty (30) days of

1 the rendition of the written order. Such appeal shall not be a
2 hearing de novo, but shall be a petition for Writ of Certiorari
3 in Circuit Court of the Fifteenth Judicial Circuit in and for
4 Palm Beach County, Florida. The Court shall be limited to
5 appellate review of the record created before the Hearing Officer
6 and the County may assess a reasonable fee for the preparation of
7 the record to be paid by the Petitioner in accordance with Sec.
8 119.07, Fla. Stat. as amended from time to time.
9 [Ord. No. 96-28] [Ord. No. 97-63] [Ord. No. 97-64]

10 **PART IV.**

11 Article 9, Section 9.1 of the Palm Beach County Unified Land
12 Development Code is hereby amended as follows:

13 **L. APPEALS.** Any affected party may appeal a final
14 determination of ERM made pursuant to this section to a Hearing
15 Officer as established in Section 4.15 of this Code. A written
16 notice of appeal shall be filed by the applicant with the
17 Director of ERM within twenty (20) days from receipt of the
18 decision appealed from, setting forth in detail the factual basis
19 for such an appeal. The appeal shall be reviewed at a hearing by
20 the Hearing Officer within sixty (60) working days of ERM's
21 receipt of a request and a \$50.00 filing fee. The applicant will
22 receive notice of the hearing no less than fifteen (15) working
23 days in advance of the hearing. At the hearing, the Hearing
24 Officer shall provide the applicant and the Director of ERM, or
25 their respective legal representatives, an opportunity to present
26 testimony and evidence, provided such information was part of the
27 review before the Director of ERM. All testimony shall be under
28 oath and shall be recorded. The formal rules of evidence shall
29 not apply but fundamental due process shall be observed and shall
30 govern the proceedings. The Hearing Officer in his or her

1 discretion, may exclude irrelevant, immaterial or unduly
2 repetitious evidence, but all conduct of their affairs shall be
3 admissible, whether or not such evidence would be admissible in a
4 trial in the courts of Florida. Any part of the evidence may be
5 received in written form. The Hearing Officer shall reverse the
6 decision of the Director of ERM only if there is substantial
7 competent evidence in the record that the Director of ERM erred
8 in applying the standards of this section. The Hearing Officer
9 shall enter a decision by written order not less than ten (10)
10 days following conclusion of the hearing. The order shall include
11 findings of fact and conclusions of law and shall be deemed final
12 administrative action. An applicant or ERM may appeal a final
13 decision of the appeal board within thirty (30) days of the
14 rendition of the decision. Such appeal shall not be a hearing de
15 novo, but shall be a petition for Writ of Certiorari in Circuit
16 Court of the Fifteenth Judicial Circuit in and for Palm Beach
17 County, Florida. The Court shall be limited to appellate review
18 of the record created before the Hearing Officer and may assess a
19 reasonable fee for the preparation of the record to be paid by
20 the Petitioner in accordance with Sec. 119.07, Fla. Stat. as
21 amended from time to time.

22 PART V.

23 Article 9, Section 9.3 of the Palm Beach County Unified Land
24 Development Code is hereby amended as follows:

25 **G. APPEALS.**

26 **1. Matters for review and time for filing.** Any person may appeal
27 to a Hearing Officer as established in Section 4.15 of this Code
28 for the following reasons.

29 **a.** To appeal ERM's permit conditions, denial of a permit, general
30 exemption or non-disclosure of a trade secret.

31 **b.** To appeal an intent to revoke or revise an Operating permit

1 and a General or special exemption.

2 c. To request a special exemption.

3 **2. Time for filing.** Written petitions for review shall be filed
4 with the Director of ERM within twenty (20) days of the date upon
5 which the petitioner receives notice of ERM's actions with
6 respect to Sec.9.3.G.1.a. or intended action with respect to Sec.
7 9.3.G.1.b. The appeal must state with specificity the reasons for
8 the appeal and shall contain such data and documentation upon
9 which the applicant seeks to rely. Failure to file within such
10 time shall constitute a waiver of the person's right of review by
11 the Hearing Officer. The filing of a petition authorized by this
12 section shall stay all proceedings with respect to all matters
13 that are contained in the petition until there is a final
14 decision of the Hearing Officer

15 **3. Hearing.** The applicant will receive notice of the hearing no
16 less than fifteen (15) working days in advance of the hearing.
17 The Hearing Officer shall render a decision on the appeal within
18 sixty (60) working days after the appeal was filed. At the
19 hearing, the Hearing Officer shall provide the applicant and the
20 Director of ERM, or their respective legal representatives, an
21 opportunity to present testimony and evidence, provided such
22 information was part of the review before the Director of ERM.
23 All testimony shall be under oath and shall be recorded. The
24 formal rules of evidence shall not apply but fundamental due
25 process shall be observed and shall govern the proceedings. The
26 Hearing Officer in his or her discretion, may exclude irrelevant,
27 immaterial or unduly repetitious evidence, but all other evidence
28 of a type commonly relied upon by reasonably prudent persons in
29 the conduct of their affairs shall be admissible, whether or not
30 such evidence would be admissible in a trial in the courts of
31 Florida. Any part of the evidence may be received in written

1 form. The Hearing Officer shall reverse the decision of the
2 Director of ERM only if there is substantial competent evidence
3 in the record that the Director of ERM erred in applying the
4 standards of this section.

5 **4. Review.** The decision of the Hearing Officer shall be final
6 administrative action on behalf of ERM and Palm Beach County. Any
7 person who is a party to the proceeding before the Hearing
8 Officer may appeal such action to the Fifteenth Judicial Circuit,
9 in and for Palm Beach County, Florida. Such appeal shall not be
10 a hearing de novo, but shall be a petition for Writ of Certiorari
11 and the Court shall be limited to appellate review of the record
12 created before the Hearing Officer. The County may assess a
13 reasonable fee for the preparation of the record to be paid by
14 the Petitioner in accordance with Sec. 119.07, Fla. Stat. as
15 amended from time to time.

16 **PART VI.**

17 Article 9, Section 9.4 of the Palm Beach County Unified Land
18 Development Code is hereby amended as follows:

19 **F. APPEALS.**

20 An applicant may appeal any decision made by ERM pursuant to this
21 Section to a Hearing Officer as established in Section 4.15 of
22 this Code. A written notice of appeal shall be filed by the
23 applicant with the Director of ERM within twenty (20) days from
24 receipt of the decision appealed from, setting forth in detail
25 the factual basis for such an appeal and documentation upon which
26 the applicant seeks to rely. The matter shall be reviewed in a
27 hearing by the Hearing Officer within sixty (60) working days of
28 ERM's receipt of a request and a fifty (50) dollar filing fee.
29 The applicant will receive notice of the hearing no less than
30 fifteen (15) working days in advance of the hearing. At the

1 hearing, the Hearing Officer shall provide the applicant and the
2 Director or ERM, or their respective legal representatives, an
3 opportunity to present testimony and evidence, provided such
4 information was part of the review before the Director of ERM.
5 All testimony shall be under oath and shall be recorded. The
6 formal rules of evidence shall not apply but fundamental due
7 process shall be observed and shall govern the proceedings. The
8 Hearing Officer in his or her discretion, may exclude irrelevant,
9 immaterial or unduly repetitious evidence, but all other evidence
10 of a type commonly relied upon by reasonably prudent persons in
11 the conduct of their affairs shall be admissible, whether or not
12 such evidence would be admissible in a trial in the courts of
13 Florida. Any part of the evidence may be received in written
14 form. The Hearing Officer shall reverse the decision of the
15 Director of ERM only if there is substantial competent evidence
16 in the record that the Director of ERM erred in applying the
17 standards of this section. The Hearing Officer shall enter a
18 decision by written order no later than ten (10) days following
19 conclusion of the hearing. The order shall include findings of
20 fact and conclusions of law and shall be deemed final
21 administrative action. An applicant or ERM may appeal a final
22 decision of the Hearing Officer within thirty (30) days of entry
23 of the decision Circuit Court of the Fifteenth Judicial Circuit
24 in and for Palm Beach County, Florida. Such appeal shall not be
25 a hearing de novo, but shall be a petition for Writ of Certiorari
26 and the Court shall be limited to appellate review of the record
27 created before the Hearing Officer. The County may assess a
28 reasonable fee for the preparation of the record to be paid by
29 the Petitioner in accordance with Sec. 119.07, Fla. Stat. as
30 amended from time to time.

31 [Ord. No. 98-3]

32 Part VII.

Article 9, Section 9.5 of the Palm Beach County Unified Land Development Code is hereby amended as follows:

2. Appeals. An applicant for any permit may appeal a final determination made by the Director of ERM to a Hearing Officer as established in Section 4.15 of this Code pursuant to this section. The applicant shall comply with the following appeal procedures.

a. Submittal. A written appeal must be made within twenty (20) days of the applicant's receipt of the decision by the Director of ERM. The appeal must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely.

b. Hearing. The applicant will receive notice of the hearing no less than fifteen (15) working days in advance of the hearing. Each hearing shall be held within sixty (60) working days after the appeal was filed of submittal of all documents which the Environmental Ordinance Appeals Board deems necessary to evaluate the appeal. At the hearing, the Hearing Officer shall provide the applicant and the Director of ERM, or their respective legal representatives, an opportunity to present testimony and evidence, provided such information was part of the review before the Director of ERM. All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. The Hearing Officer in his or her discretion, may exclude irrelevant, immaterial or unduly repetitious evidence, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form. The Hearing Officer shall

reverse the decision of the Director of ERM only if there is substantial competent evidence in the record that the Director of ERM erred in applying the standards of this section. At the conclusion of the hearing, the Hearing Officer appeal board shall enter a decision by written order no later than ten (10) days following conclusion of the hearing. The order shall include findings of fact and conclusions of law and shall be deemed final administrative action. The decision shall be mailed to the applicant no later than ten (10) days after the hearing. Written orders of the Environmental Ordinance Appeals Board shall be final.

c. Judicial relief. An applicant or ERM may appeal a final written order to the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. Such appeal shall not be a hearing de novo, but shall be a petition for Writ of Certiorari and the Court shall be limited to appellate review of the record created before the Hearing Officer. The County may assess a reasonable fee for the preparation of the record to be paid by the Petitioner in accordance with Sec. 119.07, Fla. Stat. as amended from time to time.

PART VIII. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

PART IX. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

1 PART X. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:

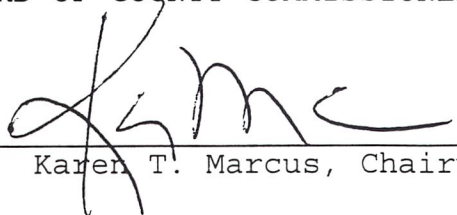
2 The provisions of this Ordinance shall become and be made a
3 part of the Unified Land Development Code of Palm Beach County,
4 Florida. The sections of this Ordinance may be renumbered or
5 relettered to accomplish such, and the word "ordinance" may be
6 changed to "section", "article", or other appropriate word.

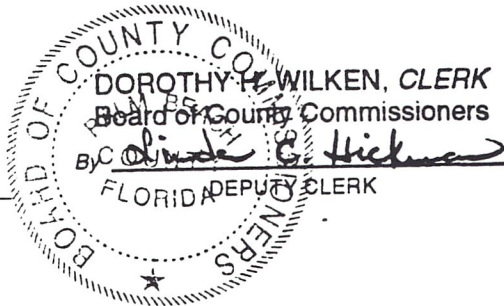
7 PART XI. EFFECTIVE DATE:

8 The provisions of this Ordinance shall become effective upon
9 filing with the Department of State.

10
11 APPROVED and ADOPTED by the Board of County Commissioners of
12 Palm Beach County, Florida, on this the 11 day of
13 March, 2003.

14
15 PALM BEACH COUNTY, FLORIDA, BY ITS
16 BOARD OF COUNTY COMMISSIONERS

17 By: 
18 Karen T. Marcus, Chairman



20 APPROVED AS TO FORM AND
21 LEGAL SUFFICIENCY

22 By: 
23 County Attorney

24 EFFECTIVE DATE: Filed with the Department of State on the 14
25 day of March, 2003.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on March 11, 2003.
DATED at West Palm Beach, FL on 4/3/03.
DOROTHY H. WILKEN, Clerk
By:  D.C.